

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

FACSIMILE: (202) 662-6291

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAY 6 10 26 AM '99

LEON S. DARRISE
CURZON STREET
LONDON W1Y 8AS

ENGLAND

TELEPHONE: 44-171-485-5655

FACSIMILE: 44-171-485-3101

KUNSTLAAN 44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-549-5230

FACSIMILE: 32-2-502-1598

JASON A. LEVINE

DIRECT DIAL NUMBER

(202) 662-5369

DIRECT FACSIMILE NUMBER

(202) 778-5369

jlevine@cov.com

May 6, 1999

BY HAND

Jonathan Levin, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

AOR 1999-12

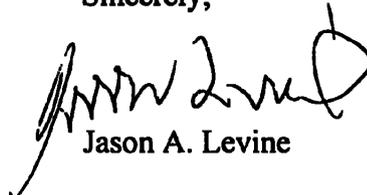
**Re: Advisory Opinion Request Concerning Federal Preemption Of The
Pennsylvania Solicitation of Funds for Charitable Purposes Act (April
26, 1999).**

Dear Mr. Levin:

I am enclosing herewith the Exhibits that were inadvertently omitted from the above Advisory Opinion Request. Thank you for bringing the omission to our attention. In response to your questions for Bobby Burchfield, who is out of the office until Monday, CWF does have a non-federal account but does not specifically solicit contributions for it. CWF uses these non-federal funds for candidate contributions and coordinated expenditures on the state level, and does not use them for issue advocacy programs in connection with any federal elections.

Please contact Bobby or me with any additional questions.

Sincerely,



Jason A. Levine

Enclosures

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

FACSIMILE: (202) 662-6291

BOBBY R. BURCHFIELD

DIRECT DIAL NUMBER

(202) 662-5350

DIRECT FACSIMILE NUMBER

(202) 778-5350

bburchfield@cov.com

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

May 3 3 10 PM '99

LECONFELDORUE

CURZON STREET

LONDON W1Y 6AS

ENGLAND

TELEPHONE: 44-171-495-5655

FACSIMILE: 44-171-495-3101

KUNSTLAAN 44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-549-5230

FACSIMILE: 32-2-502-1598

April 26, 1999

N. Bradley Lichtfield, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

**Re: Advisory Opinion Request Concerning Federal
Preemption Of The Pennsylvania Solicitation of
Funds for Charitable Purposes Act.**

Dear Mr. Lichtfield:

This Advisory Opinion Request is submitted on behalf of the Campaign for Working Families ("CWF") pursuant to 2 U.S.C. § 437f and 11 C.F.R. § 112. CWF respectfully requests the Commission to answer the following questions:

(i) Does the Federal Election Campaign Act ("FECA") govern CWF's solicitations of funds for deposit into its account for use in federal elections even if those solicitations do not mention a specific candidate?

(ii) If so, even if such solicitations are considered "charitable appeals" under the Pennsylvania Solicitation of Funds for Charitable Purposes Act, 10 Pa. Stat. §§ 162.1 et seq. (the "Pennsylvania Statute"), does the FECA preempt the

N. Bradley Lichtfield, Esq.
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registration, reporting, and disclaimer requirements of the Pennsylvania Statute?

I. FACTUAL BACKGROUND

CWF is a multi-candidate political committee that solicits contributions for use in federal election activity. From time to time, CWF solicits funds in each of the fifty States through direct mailings that are not candidate specific but instead discuss important public policy issues. Pursuant to Commission regulations, CWF places contributions received from such fundraising into the same "federal account" with funds raised in solicitations that mention federal candidates, and separate from any funds intended for use on activities that are not federally regulated. From that federal account, CWF makes contributions to and independent expenditures on behalf of candidates for federal office. During the 1998 election cycle, CWF made contributions to 129 federal candidates, and independent expenditures on behalf of several other federal candidates.

As a federal political committee, CWF is registered with the Commission in accord with 2 U.S.C. § 433(a) and files the reports required by 2 U.S.C. § 434(a). CWF's fundraising

N. Bradley Lichtfield, Esq.
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solicitations display the disclaimers required by 2 U.S.C. § 441d and 11 C.F.R. § 110.11. See Exhibit 1 hereto.

Despite CWF's compliance with the FECA, the Pennsylvania Bureau of Charitable Organizations (the "Bureau") seeks to impose additional registration, reporting, and disclaimer requirements on CWF in connection with its fundraising efforts. The Bureau has construed CWF's solicitations as "charitable appeals" subject to the Pennsylvania Statute. Thus, on May 28, 1998, the Secretary of the Commonwealth ordered CWF to cease and desist from soliciting contributions in Pennsylvania until it either registers with the Bureau as a "charitable organization" or proves itself exempt from the Pennsylvania Statute. See Exhibit 2 hereto. On December 1, the Bureau issued an Investigative Subpoena purporting to compel CWF to produce documents relating to its fundraising activities in the Commonwealth. See Exhibit 3 hereto.

By letter to the Bureau dated December 11, 1998, CWF explained that its fundraising efforts are not "charitable appeals" under the Pennsylvania Statute, 10 Pa. Stat. § 162.3, and that the Bureau lacks jurisdiction over it. See Exhibit 4 hereto. CWF further contended that, in any event, the FECA

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preempts the Pennsylvania Statute to the extent the latter purports to impose additional registration, reporting, and disclaimer requirements on CWF. See 10 Pa. Stat. §§ 162.5(b) (registration), (e)-(f) (reporting), 162.9(h) (disclaimer).

Bureau Prosecutor Carole Clarke responded by letter dated February 8, 1999, asserting that the Pennsylvania Statute is not preempted because its "purpose" is not to regulate federal political committees per se. See Exhibit 5 hereto. Ms. Clarke also indicated that the Bureau seeks to apply the Pennsylvania Statute only to CWF's fundraising solicitations that do not advocate the election of a specific candidate. Such non-candidate specific solicitations discuss public policy issues, and thus, Ms. Clarke argued, they implicate a "social welfare or advocacy objective," or "charitable appeal," under 10 Pa. Stat. § 162.3.

In telephonic discussions, Ms. Clarke has reaffirmed that the Pennsylvania Statute does not apply to political committee fundraising solicitations that name one or more specific candidates; rather, the Bureau seeks to apply the Pennsylvania Statute to the broad class of political committee fundraising solicitations that discuss issues of public importance without naming a particular candidate or beneficiary.

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CWF has responded that the FECA reporting and disclaimer provisions govern even non-candidate specific solicitations and that the Pennsylvania Statute provisions are preempted.

CWF intends to continue mailing non-candidate specific solicitations into Pennsylvania in full compliance with federal law and Commission regulations. The Bureau has clearly expressed its intention to assert regulatory authority over these solicitations unless persuaded that its authority is preempted by federal law. CWF and the Bureau have agreed that an Advisory Opinion from the Commission on the preemption issue may help resolve this impasse.

II. DISCUSSION

A. The FECA Governs CWF's Non-candidate Specific Fundraising Solicitations.

CWF's non-candidate specific fundraising solicitations are subject to the FECA by its plain terms. CWF is a federal "political committee" because it receives "contributions" and makes political "expenditures" in excess of \$1,000 per calendar year. See 2 U.S.C. § 431(4)(A). Accordingly, CWF is subject to FECA provisions concerning "registration of political committees" and the reports to be filed by "treasurers of

N. Bradley Lichtfield, Esq.
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political committees." See 2 U.S.C. §§ 433(a), 434(a); accord
11 C.F.R. §§ 102, 104.

The FECA fundraising disclaimer requirements also govern CWF's non-candidate specific solicitations. The FECA provides that whenever any person "solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising," the solicitation must contain one of several alternative disclaimers. 2 U.S.C. § 441d(a) (emphasis added). In the case of non-candidate specific solicitations such as CWF's, the disclaimer must state "the name of the person who paid for the communication" and also "state that the communication is not authorized by any candidate or candidate's committee." *Id.* § 441(d)(a)(3).

The Commission similarly requires that non-candidate specific solicitations "on behalf of a political committee which is not an authorized committee of a candidate" must "clearly state the full name of the person who paid for the communication." 11 C.F.R. § 110.11(a)(1)(iv) (emphasis added). The disclaimer must "appear and be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for . . .

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the communication." *Id.* § 110.11(a)(1). These regulations bind all multi-candidate political committees, including CWF.

- B. Even If CWF's Non-candidate-Specific Fundraising Solicitations Were Covered by the Pennsylvania Statute, That Statute's Registration, Reporting, and Disclaimer Requirements Are Preempted by the FECA.

Although CWF does not concede that it is a "charitable organization" or that its non-candidate specific fundraising solicitations are "charitable appeals" under the Pennsylvania Statute, 10 Pa. Stat. § 162.3, CWF does not seek a ruling from the Commission on whether CWF is or is not a "charitable organization." Rather, CWF asks the Commission simply to assume that the Bureau has correctly determined that the rhetoric in its fundraising solicitations falls within the Pennsylvania Statute's broad definition of a "charitable appeal." Even so, however, the registration, reporting, and disclaimer requirements of the Pennsylvania Statute are nonetheless preempted by the FECA.

The FECA expressly supersedes and preempts "any provision of State law with respect to election to Federal office." 2 U.S.C. § 453. The Commission broadly extends this preemption provision to all state laws concerning the "organization and registration" of federal political committees,

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the "disclosure" of their "receipts and expenditures," and the "limitation" of their "contributions and expenditures." See 11 C.F.R. §§ 108.7(b)(1)-(3).

An inquiry into congressional intent is essential here, because the "critical question" in preemption matters is "always whether Congress intended that federal regulation supersede state law." *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986). See also *Barnett Bank of Marion Cty., N.A. v. Nelson*, 517 U.S. 25, 30 (1996) (Court must ask: "Did Congress, in enacting the Federal Statute, intend to . . . set aside the laws of a State?").

The 1974 House Report on the FECA demonstrates that "[i]t is the intent of the Committee to preempt all state and local laws." H.R. Rep. No. 93-1239, 93rd Cong. 2d Sess. 10 (1974) (emphasis added). In particular, Congress sought "to make certain that federal law is construed to occupy the field with respect to elections to Federal office," and to ensure that federal law "will be the sole authority under which such elections are regulated." *Id.* Similarly, the 1974 Conference Report on the FECA indicates that "[i]t is clear that the Federal law occupies the field with respect to reporting and disclosure of political contributions to and expenditures by

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Federal . . . political committees." Conf. Rep. No. 1237, 93rd Cong., 2d Sess. 100-01 (1974) (emphasis added). Congress clearly intended FECA preemption to be broad and all-inclusive.

Further, the Commission has often ruled that the FECA preempts state laws with respect to federal political committees. Indeed, "[t]he Commission has consistently relied upon the Act's broad preemption provision." Advisory Opinion 1988-21. Thus, in Advisory Opinion 1986-27, the Commission ruled that the FECA preempted a State's laws that "would impose reporting and itemization requirements on . . . a Federal political committee . . . that would exceed those required by the Act and Commission regulations." *Id.* This ruling is consistent with many others that found state laws preempted whether or not they imposed requirements more stringent than those imposed by the FECA. See, e.g. Advisory Opinion 1995-41 (FECA preempts imposition on federal political committee of New York's contribution and expenditure reporting requirements); Advisory Opinion 1993-14 (same for Rhode Island registration and reporting requirements).

Federal courts have also held that FECA preempts state laws that are less directly connected to core federal political committee activities than is the Pennsylvania Statute. For

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example, in *Bunning v. Commonwealth of Kentucky*, 42 F.3d 1008 (6th Cir. 1994), the court found FECA preemption of a state law that purported to regulate a federal political committee's poll testing the effectiveness of its advertising. The court viewed the state law as an "intrusion into . . . federally regulated activity" and an improper "attempt to impose on a federal political committee" the State's requirements. *Id.* at 1011. Surely the regulation of occasional polling is not nearly so intrusive on the activities of federal political committees as are the Pennsylvania Statute's registration, reporting, and disclaimer requirements.

Indeed, the Pennsylvania Statute purports to require even more detailed reports and registration statements than does the FECA, and also purports to require a different fundraising disclaimer. Compare 10 Pa. Stat. §§ 162.5(b), (e), 162.9(h) with 2 U.S.C. §§ 433(a), 434(a), 441d. It is likewise preempted.

The preemption necessarily extends to CWF's non-candidate specific fundraising activity; indeed, by their very nature and by law multi-candidate political committees must raise funds from numerous contributors and disburse funds to numerous candidates. To our knowledge, national political

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April 26, 1999
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parties frequently solicit funds by invoking issue appeals rather than candidate appeals, and it is axiomatic that political parties are not charities. For CWF to suggest in each of its solicitations that only one or a small number of candidates will benefit from funds raised would be misleading. Moreover, for CWF to name specific candidates in all of its solicitations might trigger independent expenditure reporting requirements. In short, only an unsophisticated view of political fundraising would assume that it must, necessarily, be candidate specific.

It is apparent that a state election law that imposed identical requirements on a multi-candidate political committee would be preempted. Cf. Advisory Opinion 1998-7 (FECA preempts application of Pennsylvania prohibition on certain corporate contributions). The Pennsylvania Statute does not escape simply because it is nominally directed at "charitable organizations," especially since the Bureau defines such organizations broadly to include federally-registered political committees. As the Supreme Court has emphasized, the "practical impact of a law," not the "name, description or characterization given it by the legislature," is the key federal preemption inquiry. *Hughes v. Oklahoma*, 441 U.S. 332, 336 (1979). Indeed, "in assessing the

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impact of a state law on the federal scheme" the Court specifically looks to "the effects of the law." *Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 105 (1992). A focus on the State's "intent," to the contrary, would "enable state legislatures to nullify nearly all unwanted federal legislation." *Perez v. Campbell*, 402 U.S. 637, 651-52 (1972).

CWF currently complies with federal law in preparing its registration statements and reports, and it also adheres to the federal disclaimer requirements for its solicitations. If the FECA did not preempt the Pennsylvania Statute, then CWF would be forced to comply both with the FECA's registration, reporting, and disclaimer requirements, and with those more onerous requirements of the Pennsylvania Statute. Further, since CWF (like virtually all multi-candidate political committees) solicits funds in numerous States, it would likely encounter multiple sets of inconsistent disclaimer regulations wherever it engaged in direct mail fundraising. Its fundraising appeals would necessarily resemble a well-traveled suitcase littered with numerous port-of-call designations. This, we respectfully submit, is the paradigm example justifying federal preemption. One of the reasons Congress enacted the FECA was to curtail the troubling "multiplicity" of political committee

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reports required by law and to ease the burden on "supervisory officers" who had been "overwhelmed by the sheer number of the reports filed." See H.R. Rep. No. 93-1239 at 2.

* * *

CWF respectfully requests that the Commission issue an Advisory Opinion finding that (i) CWF's non-candidate specific fundraising is subject to the requirements of the FECA, and (ii) that the registration, reporting, and disclaimer requirements of the Pennsylvania Statute are preempted insofar as they apply to multi-candidate political committees like CWF.

Thank you for your consideration of this matter.

Respectfully submitted,



Bobby R. Burchfield
Jason A. Levine

April 26, 1999

cc: Carole L. Clarke, Esq.

Dear Mr. Reagan,

Welcome and thank you for agreeing to serve as CWF's new Chairman. Enclosed is my completed 1999 Mandate from America's Families to help CWF send a message to Congress that protecting and strengthening America's families must be their priority in 1999. Please tabulate my answers and deliver them to the leadership in Congress.

I have also enclosed a contribution to help CWF continue to support and elect pro-family candidates. Amount enclosed:

\$300 \$225 \$150 Other \$ _____

Signature _____

Mr. Robert Truckey, Jr.
2694 N Vista Valley Road
Orange, CA 92867-1764



H152

Paid for by Campaign for Working Families.

TYPE OF CREDIT CARD

(Check one) Personal Corporate



Visa



Mastercard



Discover

IF CORPORATE, COMPANY NAME _____

NAME (AS IT APPEARS ON CARD) _____

EXPIRATION DATE _____

CARD NUMBER _____

AMOUNT OF GIFT _____

SIGNATURE _____

You can also help CWF by giving us the names of three pro-family friends who you feel would be interested in joining in this mission:

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Thank you again for your help with this important project.

Contributions to CWF are not deductible for federal income tax purposes. Unless otherwise prohibited, all contributions will be deposited into CWF's federal account. Corporate contributions and contributions exceeding \$5,000 will be deposited into CWF's state account.

Federal law requires we ask the following:

OCCUPATION _____

PLACE OF BUSINESS _____

May we also request the following:

HOME PHONE _____

BUSINESS PHONE _____

DAYTIME FAX NUMBER _____

E-MAIL ADDRESS _____



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
HARRISBURG, PENNSYLVANIA
17120

SECRETARY OF THE COMMONWEALTH

CERTIFIED MAIL #P 482 103 229
RETURN RECEIPT REQUESTED

IN THE MATTER OF: CAMPAIGN FOR WORKING FAMILIES

ORDER

AND NOW, THIS 28TH DAY OF MAY, 1998, THE SECRETARY OF THE COMMONWEALTH HAVING FOUND THAT CAMPAIGN FOR WORKING FAMILIES IS NOT REGISTERED WITH THE DEPARTMENT'S BUREAU OF CHARITABLE ORGANIZATIONS, HAS FAILED TO RESPOND TO THE BUREAU'S REPEATED REQUESTS FOR INFORMATION, AND HAS SOLICITED CONTRIBUTIONS IN PENNSYLVANIA WHILE IT WAS NOT REGISTERED; IN ACCORDANCE WITH THE SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES ACT, 10 P.S. § 162.1 *ET SEQ.*, HEREBY ORDERS CAMPAIGN FOR WORKING FAMILIES TO CEASE AND DESIST FROM SOLICITING CONTRIBUTIONS IN PENNSYLVANIA UNTIL SUCH TIME AS CAMPAIGN FOR WORKING FAMILIES HAS DULY REGISTERED OR PROVIDED THE BUREAU WITH EVIDENCE THAT IT IS EXEMPT FROM REGISTRATION OR EXCLUDED FROM THE ACT. THIS ORDER SHALL TAKE EFFECT IMMEDIATELY.

BY ORDER:
DEPARTMENT OF STATE

A handwritten signature in black ink, appearing to read 'Yvette Kane', written over a horizontal line.

YVETTE KANE
SECRETARY OF THE COMMONWEALTH

THIS ORDER MAY BE APPEALED BY REQUESTING A HEARING, IN WRITING, WITHIN TEN DAYS OF THE DATE OF THIS ORDER IN ACCORDANCE WITH 2 PA. C. S. § 501 *ET SEQ.* THE REQUEST MUST BE SENT TO: THE BUREAU OF CHARITABLE ORGANIZATIONS, 3RD FLOOR, 124 PINE STREET, HARRISBURG, PA 17101.



Commonwealth of Pennsylvania
Department of State
Bureau of Charitable Organizations

P.O. Box 8723
 Harrisburg, Pennsylvania 17105-2649

INVESTIGATIVE SUBPOENA

To: Gary Bauer, Chairman
 Campaign for Working Families
 499 South Capitol Street, SW
 Washington, DC 20003-4004

GREETINGS:

You are hereby commanded, setting aside all manner of business and excuses whatsoever, to immediately produce and tender, to a duly authorized representative of the Bureau, the identified documents, which are relevant to the above matter presently under investigation and undetermined before the Bureau of Charitable Organizations.

Copies of all contracts between your organization and any other organization which has solicited, or is soliciting, charitable contributions in Pennsylvania; a list of all contributions received from Pennsylvania residents; and a list of all Pennsylvania residents solicited to date.

And this you are not to omit under penalty which may ensure.

WITNESS my hand and the official seal of the Secretary of the Commonwealth this 1st day of December, 1998.



Karl E. Peters
 Director, Bureau of Charitable Organizations

[Signature]
 Assistant Counsel

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

FACSIMILE: (202) 662-6291

JASON A. LEVINE

DIRECT DIAL NUMBER

(202) 662-5389

DIRECT FACSIMILE NUMBER

(202) 778-5389

jlevine@cov.com

LECONFIELD HOUSE

CURZON STREET

LONDON W1Y 8AS

ENGLAND

TELEPHONE: 44-171-495-5855

FACSIMILE: 44-171-495-3101

KUNSTLAAN 44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-549-5230

FACSIMILE: 32-2-502-1598

December 11, 1998

BY FIRST CLASS MAIL

Mr. Karl E. Emerson
 Director, Bureau of Charitable Organizations
 Commonwealth of Pennsylvania
 Department of State
 P.O. Box 8723
 Harrisburg, PA 17105-2649

Re: Case No. 1998-98-00322 (December 1, 1998)
Subpoena Served On Campaign For Working Families

Dear Mr. Emerson:

We respectfully submit this letter on behalf of the Campaign For Working Families ("CWF") in response to the above-referenced Subpoena. CWF objects to the Subpoena on two grounds. First and foremost, the Bureau of Charitable Organizations lacks jurisdiction over CWF because it is not a "charitable organization." Second, the Federal Election Campaign Act ("FECA") expressly supersedes and preempts application of the Solicitation of Funds for Charitable Purposes Act, 10 P.S. §§ 162.1 et seq. (the "Funds Act"), to CWF. For these reasons, CWF also objects to the initial Cease and Desist Order issued by the Bureau on May 28, 1998.

The Funds Act regulates the activities of "charitable organizations" and the persons or entities they retain to assist them in soliciting contributions. See 10 P.S. §§ 162.2, 162.3. The Funds Act defines a "charitable organization" as a person or entity "granted tax exempt status under section 501(c)(3) of the Internal Revenue Code," or any person "who holds himself out to be established for any charitable purpose" or who employs a "charitable" appeal as the basis of any solicitation. See 10 P.S. § 162.3. CWF meets none of these definitions of a "charitable organization," and is not covered by the Funds Act.

CWF is a political committee that makes independent expenditures to candidates for federal office, pursuant to 2

Mr. Karl E. Emerson
December 11, 1998
Page 2

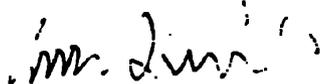
U.S.C. §§ 431(4), (17) and 11 C.F.R. § 109.1. CWF is not a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. Indeed, section 501(c)(3) specifically bars covered organizations from engaging in political advocacy of the sort CWF undertakes. CWF also does not hold itself out as having a charitable purpose, nor does it employ charitable appeals as a basis for fundraising. Accordingly, CWF is not subject to the Funds Act, and it objects to the Investigative Subpoena and the Cease and Desist Order on this ground.

Moreover, the provisions of FECA and its implementing rules "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. § 453. The Federal Election Commission construes this provision to preempt State laws concerning: "(1) Organization and registration of political committees supporting Federal candidates; (2) Disclosure of receipts and expenditures by Federal candidates and political committees; and (3) Limitation on contributions and expenditures regarding Federal candidates and political committees." 11 C.F.R. § 108.7(b). The Funds Act addresses these specific matters, see 10 P.S. §§ 162.5 - 162.9 (registration), 162.13 (disclosure and limitations), and it accordingly is superseded and preempted by FECA with respect to CWF. See, e.g. Teper v. Miller, 82 F.3d 989, 998 (11th Cir. 1996) (FECA preempts Georgia law to the extent it purported to prevent a state legislator from accepting contributions for his federal election campaign); Bunning v. Commonwealth of Ky., 42 F.3d 1008, 1012 (6th Cir 1994) (FECA preempts Kentucky law to the extent it authorized the State to investigate a poll conducted by a congressional reelection committee); Friends of Phil Gramm v. Americans for Phil Gramm in '84, 587 F. Supp. 769 (E.D. Va. 1984) (FECA preempts Virginia law concerning the name of an independent political committee). In fact, CWF is governed by parallel provisions of federal law. See 2 U.S.C. §§ 433(a) (registration), 434(a) (disclosure), 441a-h (limitations).

CWF hereby expressly reserves the right to move to quash the Investigative Subpoena and the Cease and Desist Order should the Bureau further attempt their enforcement.

We hope this letter sufficiently explains the position of CWF. Please do not hesitate to contact us "if the foregoing" is unclear in any respect.

Sincerely yours,



Bobby R. Burchfield
Jason A. Levine

COVINGTON & BURLING

Mr. Karl E. Emerson
December 11, 1998
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cc: Ms. Yvette Kane
Secretary of the Commonwealth
Commonwealth of Pennsylvania
Department of State
Harrisburg, PA 17120



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF CHARITABLE ORGANIZATIONS**

**LEGAL OFFICE
PROSECUTION DIVISION
(717) 783-7200
FAX: (717) 787-0251**

**116 PINE STREET
P.O. BOX 2649
HARRISBURG, PA
17105-2649**

February 8, 1999

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**Jason A. Levine, Esquire
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
P. O. Box 7566
Washington, DC 20044-7566**

Dear Mr. Levine:

Karl Emerson has forwarded your December 11, 1998 letter to the legal office so that we may explain our position regarding the Cease and Desist Order, the subpoena, and the solicitations mailed into the Commonwealth of Pennsylvania by your client Campaign for Working Families ("CWF").

The Federal Election Campaign Act ("FECA") does not supersede and preempt the Solicitation of Funds for Charitable Purposes Act ("Solicitation Act") with regard to the solicitation of funds for charitable purposes in the Commonwealth. First, the Solicitation Act does not seek to regulate the organization and registration of political committees supporting Federal candidates. It seeks to regulate the solicitation of funds for charitable purposes within the Commonwealth. The purpose of the Solicitation Act is to protect the Commonwealth's citizens from fraud and deception, an area which has historically been within the police powers of the states. Second, Section 13, 10 P.S. §162.13, does not seek to regulate the disclosure of receipts and expenditures by Federal candidates and political committees. The disclosure it regulates is the information that must be disclosed on the solicitation itself. Finally, Section 13 of the Solicitation Act does not limit the contributions and expenditures regarding Federal candidates and political committees. It limits the solicitation of contributions to the charitable purpose expressed in the solicitation material or on the registration statement on file with the Bureau of Charitable Organizations ("Bureau").

Page Two

CWF's mailings into Pennsylvania do employ a charitable appeal. Admittedly, some mailings do advocate supporting certain candidates because of their beliefs, however the mailings which promote, in whole or in part, supporting the pro-life, anti-gay rights, and pro-family movements are employing a social welfare or advocacy objective. Under the Solicitation Act, this is a charitable purpose and appeal. Accordingly, these solicitations fall within the jurisdiction of the Solicitation Act and the Secretary of the Commonwealth.

The Secretary properly issued a Cease and Desist Order in May 1998 due to CWF's failure to respond to the Bureau's requests for information. The subpoena was a follow-up measure after CWF continued to mail charitable solicitations into the Commonwealth in violation of the Cease and Desist Order. Section 16, 10 P.S. §162.16, of the Solicitation Act gives the Secretary the authority to conduct an investigation and issue subpoenas where she deems necessary. Because your client's solicitations use a charitable appeal, the Secretary acted properly within her jurisdiction in issuing the investigative subpoena.

In order for this office to further its understanding of CWF's activities and extent of solicitations it is requested that you supply additional information as described below:

1. Identify each organization or other entity that conducted any type of solicitation in the Commonwealth of Pennsylvania on behalf of CWF, including the organization's full name, address, contact person, and contact telephone number. Also, state the beginning date and, if appropriate, the ending date of any solicitation activity.
2. Describe, in detail, any methods by which CWF, or anyone acting on its behalf, solicited contributions in Pennsylvania.
3. Provide complete and accurate copies of any written materials utilized as part of, or in response to, any solicitation in Pennsylvania, including, but not limited to, any invoices, receipts, letters, advertisements, brochures, books, publications, telephone scripts, etc.
4. Indicate the total number of items printed, by whom, including name, address, and contact telephone number for any advertisements, brochures, books, publications, or similar item identified in number 2.

5. Identify each location from which solicitations are conducted, to include:
 - a. complete street, city and state address;
 - b. complete name of the person or entity leasing or renting the facility;
 - c. name and title of the person supervising the activities;
 - d. a description of the activities conducted there; and
 - e. start and, if applicable, stop date of the activities.
6. Identify any and all Officers, Directors, Trustees, Stockholders, Principals, or other individuals having or exercising any financial or other control over CWF's activities, including the individual's address, telephone number, date of birth, social security number, and responsibilities.
7. Identify any independent contractors, sub-contractors, out-sourcing agents, or other person or entity associated with CWF's solicitation activity in PA, including name, address, telephone number, date of birth, social security number, and type of service furnished. Provide copies of any written agreements with any identified individual(s) or, in the absence of written agreements, provide specific details of any verbal agreements.
8. Provide exemplary copies of any and all contracts or other written agreements with any individual, group, organization, or other entity which conducts solicitation activity on behalf of CWF in Pennsylvania. In the absence of any written agreement, provide the details of any verbal agreement.
9. Provide exemplary copies of any and all financial statements prepared by or on behalf of CWF.

Jason A. Levine, Esquire
February 8, 1999

Page Four

10. Identify and all addresses, post office boxes, or similar mail receptacles receiving any mail, checks, invoices, monies, or other articles of communication or transactions associated with any solicitations activity CWF, or anyone acting on behalf of CWF, conducted in Pennsylvania.
11. Identify any and all bank or similar accounts into which any checks, money orders, wire or electronic transfers, or any other financial instruments associated with any of CWF's solicitation activities in Pennsylvania are deposited, to include:
 - a. name and address of the financial institution;
 - b. title of the account;
 - c. account number(s);
 - d. date the account was opened; and
 - e. name title of all authorized signers on the account.
12. Identify each Pennsylvania resident/business who made a contribution in response to a solicitation, paid any fees, or purchased an advertisement of any other type of product or service, to include:
 - a. name, address, and telephone number;
 - b. amount of contribution or payment; and
 - c. date of the contribution or payment.

Therefore, I am requesting that you comply with the subpoena and provide the additional information within 30 days or this office will take steps to enforce the subpoena.

Jason A. Levine, Esquire
February 8, 1999

Page Five

If you have any questions, please feel free to contact me at the above number.

Yours truly,

A handwritten signature in cursive script that reads "Carole L. Clarke".

Carole L. Clarke
Prosecuting Attorney
Commonwealth of Pennsylvania
Bureau of Charitable Organizations

CLC/dws

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

FACSIMILE: (202) 662-6291

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAY 6 10 26 AM '99

LONDON FIELD OFFICE
CURZON STREET
LONDON W1Y 8AS

ENGLAND

TELEPHONE: 44-71-495-5655

FACSIMILE: 44-71-495-3101

KUNSTLAAN 44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-549-5230

FACSIMILE: 32-2-502-1598

JASON A. LEVINE

DIRECT DIAL NUMBER

(202) 662-5369

DIRECT FACSIMILE NUMBER

(202) 778-5369

jlevine@cov.com

May 6, 1999

BY HAND

Jonathan Levin, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

AOR 1999-12

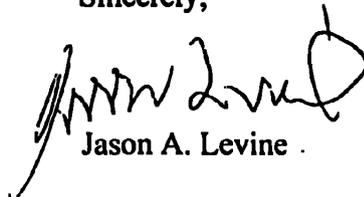
**Re: Advisory Opinion Request Concerning Federal Preemption Of The
Pennsylvania Solicitation of Funds for Charitable Purposes Act (April
26, 1999).**

Dear Mr. Levin:

I am enclosing herewith the Exhibits that were inadvertently omitted from the above Advisory Opinion Request. Thank you for bringing the omission to our attention. In response to your questions for Bobby Burchfield, who is out of the office until Monday, CWF does have a non-federal account but does not specifically solicit contributions for it. CWF uses these non-federal funds for candidate contributions and coordinated expenditures on the state level, and does not use them for issue advocacy programs in connection with any federal elections.

Please contact Bobby or me with any additional questions.

Sincerely,


Jason A. Levine

Enclosures

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

FACSIMILE: (202) 662-6291

BOBBY R. BURCHFIELD

DIRECT DIAL NUMBER

(202) 662-5350

DIRECT FACSIMILE NUMBER

(202) 778-5350

bburchfield@cov.com

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAY 3 3 40 PM '99

LECONNELOUSE

CURZON STREET

LONDON W1Y 8AS

ENGLAND

TELEPHONE: 44-171-495-5655

FACSIMILE: 44-171-495-3101

KUNSTLAAN 44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-549-5230

FACSIMILE: 32-2-502-1598

April 26, 1999

N. Bradley Lichtfield, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

**Re: Advisory Opinion Request Concerning Federal
Preemption Of The Pennsylvania Solicitation of
Funds for Charitable Purposes Act.**

Dear Mr. Lichtfield:

This Advisory Opinion Request is submitted on behalf of the Campaign for Working Families ("CWF") pursuant to 2 U.S.C. § 437f and 11 C.F.R. § 112. CWF respectfully requests the Commission to answer the following questions:

(i) Does the Federal Election Campaign Act ("FECA") govern CWF's solicitations of funds for deposit into its account for use in federal elections even if those solicitations do not mention a specific candidate?

(ii) If so, even if such solicitations are considered "charitable appeals" under the Pennsylvania Solicitation of Funds for Charitable Purposes Act, 10 Pa. Stat. §§ 162.1 et seq. (the "Pennsylvania Statute"), does the FECA preempt the

N. Bradley Lichtfield, Esq.
April 26, 1999
Page 2

registration, reporting, and disclaimer requirements of the Pennsylvania Statute?

I. FACTUAL BACKGROUND

CWF is a multi-candidate political committee that solicits contributions for use in federal election activity. From time to time, CWF solicits funds in each of the fifty States through direct mailings that are not candidate specific but instead discuss important public policy issues. Pursuant to Commission regulations, CWF places contributions received from such fundraising into the same "federal account" with funds raised in solicitations that mention federal candidates, and separate from any funds intended for use on activities that are not federally regulated. From that federal account, CWF makes contributions to and independent expenditures on behalf of candidates for federal office. During the 1998 election cycle, CWF made contributions to 129 federal candidates, and independent expenditures on behalf of several other federal candidates.

As a federal political committee, CWF is registered with the Commission in accord with 2 U.S.C. § 433(a) and files the reports required by 2 U.S.C. § 434(a). CWF's fundraising

N. Bradley Lichtfield, Esq.
April 26, 1999
Page 3

solicitations display the disclaimers required by 2 U.S.C. § 441d and 11 C.F.R. § 110.11. See Exhibit 1 hereto.

Despite CWF's compliance with the FECA, the Pennsylvania Bureau of Charitable Organizations (the "Bureau") seeks to impose additional registration, reporting, and disclaimer requirements on CWF in connection with its fundraising efforts. The Bureau has construed CWF's solicitations as "charitable appeals" subject to the Pennsylvania Statute. Thus, on May 28, 1998, the Secretary of the Commonwealth ordered CWF to cease and desist from soliciting contributions in Pennsylvania until it either registers with the Bureau as a "charitable organization" or proves itself exempt from the Pennsylvania Statute. See Exhibit 2 hereto. On December 1, the Bureau issued an Investigative Subpoena purporting to compel CWF to produce documents relating to its fundraising activities in the Commonwealth. See Exhibit 3 hereto.

By letter to the Bureau dated December 11, 1998, CWF explained that its fundraising efforts are not "charitable appeals" under the Pennsylvania Statute, 10 Pa. Stat. § 162.3, and that the Bureau lacks jurisdiction over it. See Exhibit 4 hereto. CWF further contended that, in any event, the FECA

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April 26, 1999
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preempts the Pennsylvania Statute to the extent the latter purports to impose additional registration, reporting, and disclaimer requirements on CWF. See 10 Pa. Stat. §§ 162.5(b) (registration), (e)-(f) (reporting), 162.9(h) (disclaimer).

Bureau Prosecutor Carole Clarke responded by letter dated February 8, 1999, asserting that the Pennsylvania Statute is not preempted because its "purpose" is not to regulate federal political committees per se. See Exhibit 5 hereto. Ms. Clarke also indicated that the Bureau seeks to apply the Pennsylvania Statute only to CWF's fundraising solicitations that do not advocate the election of a specific candidate. Such non-candidate specific solicitations discuss public policy issues, and thus, Ms. Clarke argued, they implicate a "social welfare or advocacy objective," or "charitable appeal," under 10 Pa. Stat. § 162.3.

In telephonic discussions, Ms. Clarke has reaffirmed that the Pennsylvania Statute does not apply to political committee fundraising solicitations that name one or more specific candidates; rather, the Bureau seeks to apply the Pennsylvania Statute to the broad class of political committee fundraising solicitations that discuss issues of public importance without naming a particular candidate or beneficiary.

N. Bradley Lichtfield, Esq.
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Page 5

CWF has responded that the FECA reporting and disclaimer provisions govern even non-candidate specific solicitations and that the Pennsylvania Statute provisions are preempted.

CWF intends to continue mailing non-candidate specific solicitations into Pennsylvania in full compliance with federal law and Commission regulations. The Bureau has clearly expressed its intention to assert regulatory authority over these solicitations unless persuaded that its authority is preempted by federal law. CWF and the Bureau have agreed that an Advisory Opinion from the Commission on the preemption issue may help resolve this impasse.

II. DISCUSSION

A. The FECA Governs CWF's Non-candidate Specific Fundraising Solicitations.

CWF's non-candidate specific fundraising solicitations are subject to the FECA by its plain terms. CWF is a federal "political committee" because it receives "contributions" and makes political "expenditures" in excess of \$1,000 per calendar year. See 2 U.S.C. § 431(4)(A). Accordingly, CWF is subject to FECA provisions concerning "registration of political committees" and the reports to be filed by "treasurers of

N. Bradley Lichtfield, Esq.
April 26, 1999
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political committees." See 2 U.S.C. §§ 433(a), 434(a); accord
11 C.F.R. §§ 102, 104.

The FECA fundraising disclaimer requirements also govern CWF's non-candidate specific solicitations. The FECA provides that whenever any person "solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising," the solicitation must contain one of several alternative disclaimers. 2 U.S.C. § 441d(a) (emphasis added). In the case of non-candidate specific solicitations such as CWF's, the disclaimer must state "the name of the person who paid for the communication" and also "state that the communication is not authorized by any candidate or candidate's committee." *Id.* § 441(d)(a)(3).

The Commission similarly requires that non-candidate specific solicitations "on behalf of a political committee which is not an authorized committee of a candidate" must "clearly state the full name of the person who paid for the communication." 11 C.F.R. § 110.11(a)(1)(iv) (emphasis added). The disclaimer must "appear and be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for . . .

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the communication." *Id.* § 110.11(a)(1). These regulations bind all multi-candidate political committees, including CWF.

B. Even If CWF's Non-candidate-Specific Fundraising Solicitations Were Covered by the Pennsylvania Statute, That Statute's Registration, Reporting, and Disclaimer Requirements Are Preempted by the FECA.

Although CWF does not concede that it is a "charitable organization" or that its non-candidate specific fundraising solicitations are "charitable appeals" under the Pennsylvania Statute, 10 Pa. Stat. § 162.3, CWF does not seek a ruling from the Commission on whether CWF is or is not a "charitable organization." Rather, CWF asks the Commission simply to assume that the Bureau has correctly determined that the rhetoric in its fundraising solicitations falls within the Pennsylvania Statute's broad definition of a "charitable appeal." Even so, however, the registration, reporting, and disclaimer requirements of the Pennsylvania Statute are nonetheless preempted by the FECA.

The FECA expressly supersedes and preempts "any provision of State law with respect to election to Federal office." 2 U.S.C. § 453. The Commission broadly extends this preemption provision to all state laws concerning the "organization and registration" of federal political committees,

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Page 8

the "disclosure" of their "receipts and expenditures," and the "limitation" of their "contributions and expenditures." See 11 C.F.R. §§ 108.7(b)(1)-(3).

An inquiry into congressional intent is essential here, because the "critical question" in preemption matters is "always whether Congress intended that federal regulation supersede state law." *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986). See also *Barnett Bank of Marion Cty., N.A. v. Nelson*, 517 U.S. 25, 30 (1996) (Court must ask: "Did Congress, in enacting the Federal Statute, intend to . . . set aside the laws of a State?").

The 1974 House Report on the FECA demonstrates that "[i]t is the intent of the Committee to preempt all state and local laws." H.R. Rep. No. 93-1239, 93rd Cong. 2d Sess. 10 (1974) (emphasis added). In particular, Congress sought "to make certain that federal law is construed to occupy the field with respect to elections to Federal office," and to ensure that federal law "will be the sole authority under which such elections are regulated." *Id.* Similarly, the 1974 Conference Report on the FECA indicates that "[i]t is clear that the Federal law occupies the field with respect to reporting and disclosure of political contributions to and expenditures by

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April 26, 1999
Page 9

Federal . . . political committees." Conf. Rep. No. 1237, 93rd Cong., 2d Sess. 100-01 (1974) (emphasis added). Congress clearly intended FECA preemption to be broad and all-inclusive.

Further, the Commission has often ruled that the FECA preempts state laws with respect to federal political committees. Indeed, "[t]he Commission has consistently relied upon the Act's broad preemption provision." Advisory Opinion 1988-21. Thus, in Advisory Opinion 1986-27, the Commission ruled that the FECA preempted a State's laws that "would impose reporting and itemization requirements on . . . a Federal political committee . . . that would exceed those required by the Act and Commission regulations." *Id.* This ruling is consistent with many others that found state laws preempted whether or not they imposed requirements more stringent than those imposed by the FECA. See, e.g. Advisory Opinion 1995-41 (FECA preempts imposition on federal political committee of New York's contribution and expenditure reporting requirements); Advisory Opinion 1993-14 (same for Rhode Island registration and reporting requirements).

Federal courts have also held that FECA preempts state laws that are less directly connected to core federal political committee activities than is the Pennsylvania Statute. For

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example, in *Bunning v. Commonwealth of Kentucky*, 42 F.3d 1008 (6th Cir. 1994), the court found FECA preemption of a state law that purported to regulate a federal political committee's poll testing the effectiveness of its advertising. The court viewed the state law as an "intrusion into . . . federally regulated activity" and an improper "attempt to impose on a federal political committee" the State's requirements. *Id.* at 1011. Surely the regulation of occasional polling is not nearly so intrusive on the activities of federal political committees as are the Pennsylvania Statute's registration, reporting, and disclaimer requirements.

Indeed, the Pennsylvania Statute purports to require even more detailed reports and registration statements than does the FECA, and also purports to require a different fundraising disclaimer. Compare 10 Pa. Stat. §§ 162.5(b), (e), 162.9(h) with 2 U.S.C. §§ 433(a), 434(a), 441d. It is likewise preempted.

The preemption necessarily extends to CWF's non-candidate specific fundraising activity; indeed, by their very nature and by law multi-candidate political committees must raise funds from numerous contributors and disburse funds to numerous candidates. To our knowledge, national political

N. Bradley Lichtfield, Esq.
April 26, 1999
Page 11

parties frequently solicit funds by invoking issue appeals rather than candidate appeals, and it is axiomatic that political parties are not charities. For CWF to suggest in each of its solicitations that only one or a small number of candidates will benefit from funds raised would be misleading. Moreover, for CWF to name specific candidates in all of its solicitations might trigger independent expenditure reporting requirements. In short, only an unsophisticated view of political fundraising would assume that it must, necessarily, be candidate specific.

It is apparent that a state election law that imposed identical requirements on a multi-candidate political committee would be preempted. Cf. Advisory Opinion 1998-7 (FECA preempts application of Pennsylvania prohibition on certain corporate contributions). The Pennsylvania Statute does not escape simply because it is nominally directed at "charitable organizations," especially since the Bureau defines such organizations broadly to include federally-registered political committees. As the Supreme Court has emphasized, the "practical impact of a law," not the "name, description or characterization given it by the legislature," is the key federal preemption inquiry. *Hughes v. Oklahoma*, 441 U.S. 332, 336 (1979). Indeed, "in assessing the

N. Bradley Lichtfield, Esq.
April 26, 1999
Page 12

impact of a state law on the federal scheme" the Court specifically looks to "the effects of the law." *Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 105 (1992). A focus on the State's "intent," to the contrary, would "enable state legislatures to nullify nearly all unwanted federal legislation." *Perez v. Campbell*, 402 U.S. 637, 651-52 (1972).

CWF currently complies with federal law in preparing its registration statements and reports, and it also adheres to the federal disclaimer requirements for its solicitations. If the FECA did not preempt the Pennsylvania Statute, then CWF would be forced to comply both with the FECA's registration, reporting, and disclaimer requirements, and with those more onerous requirements of the Pennsylvania Statute. Further, since CWF (like virtually all multi-candidate political committees) solicits funds in numerous States, it would likely encounter multiple sets of inconsistent disclaimer regulations wherever it engaged in direct mail fundraising. Its fundraising appeals would necessarily resemble a well-traveled suitcase littered with numerous port-of-call designations. This, we respectfully submit, is the paradigm example justifying federal preemption. One of the reasons Congress enacted the FECA was to curtail the troubling "multiplicity" of political committee

N. Bradley Lichtfield, Esq.
April 26, 1999
Page 13

reports required by law and to ease the burden on "supervisory officers" who had been "overwhelmed by the sheer number of the reports filed." See H.R. Rep. No. 93-1239 at 2.

* * *

CWF respectfully requests that the Commission issue an Advisory Opinion finding that (i) CWF's non-candidate specific fundraising is subject to the requirements of the FECA, and (ii) that the registration, reporting, and disclaimer requirements of the Pennsylvania Statute are preempted insofar as they apply to multi-candidate political committees like CWF.

Thank you for your consideration of this matter.

Respectfully submitted,



Bobby R. Burchfield
Jason A. Levine

April 26, 1999

cc: Carole L. Clarke, Esq.

Dear Mr. Reagan,

Welcome and thank you for agreeing to serve as CWF's new Chairman. Enclosed is my completed 1999 Mandate from America's Families to help CWF send a message to Congress that protecting and strengthening America's families must be their priority in 1999. Please tabulate my answers and deliver them to the leadership in Congress.

I have also enclosed a contribution to help CWF continue to support and elect pro-family candidates. Amount enclosed:

\$300 \$225 \$150 Other \$ _____

Signature _____

Mr. Robert Truckey, Jr.
2694 N Vista Valley Road
Orange, CA 92867-1764



H152

Paid for by Campaign for Working Families.

TYPE OF CREDIT CARD

(Check one) Personal Corporate



Visa



Mastercard



Discover

IF CORPORATE, COMPANY NAME _____

NAME (AS IT APPEARS ON CARD) _____

EXPIRATION DATE _____

CARD NUMBER _____

AMOUNT OF GIFT _____

SIGNATURE _____

You can also help CWF by giving us the names of three pro-family friends who you feel would be interested in joining in this mission:

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Thank you again for your help with this important project.

Contributions to CWF are not deductible for federal income tax purposes. Unless otherwise prohibited, all contributions will be deposited into CWF's federal account. Corporate contributions and contributions exceeding \$5,000 will be deposited into CWF's state account.

Federal law requires we ask the following:

OCCUPATION _____

PLACE OF BUSINESS _____

May we also request the following:

HOME PHONE _____

BUSINESS PHONE _____

DAYTIME FAX NUMBER _____

E-MAIL ADDRESS _____



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
HARRISBURG, PENNSYLVANIA
17120

SECRETARY OF THE COMMONWEALTH

**CERTIFIED MAIL #P 482 103 229
RETURN RECEIPT REQUESTED**

IN THE MATTER OF: CAMPAIGN FOR WORKING FAMILIES

ORDER

AND NOW, THIS 28TH DAY OF MAY, 1998, THE SECRETARY OF THE COMMONWEALTH HAVING FOUND THAT CAMPAIGN FOR WORKING FAMILIES IS NOT REGISTERED WITH THE DEPARTMENT'S BUREAU OF CHARITABLE ORGANIZATIONS, HAS FAILED TO RESPOND TO THE BUREAU'S REPEATED REQUESTS FOR INFORMATION, AND HAS SOLICITED CONTRIBUTIONS IN PENNSYLVANIA WHILE IT WAS NOT REGISTERED; IN ACCORDANCE WITH THE SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES ACT, 10 P.S. § 162.1 *ET SEQ.*, HEREBY ORDERS CAMPAIGN FOR WORKING FAMILIES TO CEASE AND DESIST FROM SOLICITING CONTRIBUTIONS IN PENNSYLVANIA UNTIL SUCH TIME AS CAMPAIGN FOR WORKING FAMILIES HAS DULY REGISTERED OR PROVIDED THE BUREAU WITH EVIDENCE THAT IT IS EXEMPT FROM REGISTRATION OR EXCLUDED FROM THE ACT. THIS ORDER SHALL TAKE EFFECT IMMEDIATELY.

BY ORDER:
DEPARTMENT OF STATE

A handwritten signature in black ink, appearing to read "Yvette Kane", written over a horizontal line.

YVETTE KANE
SECRETARY OF THE COMMONWEALTH

THIS ORDER MAY BE APPEALED BY REQUESTING A HEARING, IN WRITING, WITHIN TEN DAYS OF THE DATE OF THIS ORDER IN ACCORDANCE WITH 2 PA. C. S. § 501 *ET SEQ.* THE REQUEST MUST BE SENT TO: THE BUREAU OF CHARITABLE ORGANIZATIONS, 3RD FLOOR, 124 PINE STREET, HARRISBURG, PA 17101.



Commonwealth of Pennsylvania
Department of State
Bureau of Charitable Organizations
 P.O. Box 8723
 Harrisburg, Pennsylvania 17105-2649

INVESTIGATIVE SUBPOENA

To: Gary Bauer, Chairman
 Campaign for Working Families
 499 South Capitol Street, SW
 Washington, DC 20003-4004

GREETINGS:

You are hereby commanded, setting aside all manner of business and excuses whatsoever, to immediately produce and tender, to a duly authorized representative of the Bureau, the identified documents, which are relevant to the above matter presently under investigation and undetermined before the Bureau of Charitable Organizations.

Copies of all contracts between your organization and any other organization which has solicited, or is soliciting, charitable contributions in Pennsylvania; a list of all contributions received from Pennsylvania residents; and a list of all Pennsylvania residents solicited to date.

And this you are not to omit under penalty which may ensure.

WITNESS my hand and the official seal of the Secretary of the Commonwealth this 1st day of December, 1998.



Karl Peters
 Director, Bureau of Charitable Organizations

[Signature]
 Assistant Counsel

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

FACSIMILE: (202) 662-6291

JASON A. LEVINE

DIRECT DIAL NUMBER

(202) 662-5369

DIRECT FACSIMILE NUMBER

(202) 778-5369

jlevine@cov.com

LECONFIELD HOUSE

CURZON STREET

LONDON W1Y 8AS

ENGLAND

TELEPHONE: 44-171-495-5655

FACSIMILE: 44-171-495-3101

KUNSTLAAN 44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-549-5230

FACSIMILE: 32-2-502-1598

December 11, 1998

BY FIRST CLASS MAIL

Mr. Karl E. Emerson
Director, Bureau of Charitable Organizations
Commonwealth of Pennsylvania
Department of State
P.O. Box 8723
Harrisburg, PA 17105-2649

Re: Case No. 1998-98-00322 (December 1, 1998)
Subpoena Served On Campaign For Working Families

Dear Mr. Emerson:

We respectfully submit this letter on behalf of the Campaign For Working Families ("CWF") in response to the above-referenced Subpoena. CWF objects to the Subpoena on two grounds. First and foremost, the Bureau of Charitable Organizations lacks jurisdiction over CWF because it is not a "charitable organization." Second, the Federal Election Campaign Act ("FECA") expressly supersedes and preempts application of the Solicitation of Funds for Charitable Purposes Act, 10 P.S. §§ 162.1 et seq. (the "Funds Act"), to CWF. For these reasons, CWF also objects to the initial Cease and Desist Order issued by the Bureau on May 28, 1998.

The Funds Act regulates the activities of "charitable organizations" and the persons or entities they retain to assist them in soliciting contributions. See 10 P.S. §§ 162.2, 162.3. The Funds Act defines a "charitable organization" as a person or entity "granted tax exempt status under section 501(c)(3) of the Internal Revenue Code," or any person "who holds himself out to be established for any charitable purpose" or who employs a "charitable" appeal as the basis of any solicitation. See 10 P.S. § 162.3. CWF meets none of these definitions of a "charitable organization," and is not covered by the Funds Act.

CWF is a political committee that makes independent expenditures to candidates for federal office, pursuant to 2

COVINGTON & BURLING

Mr. Karl E. Emerson
December 11, 1998
Page 2

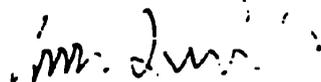
U.S.C. §§ 431(4), (17) and 11 C.F.R. § 109.1. CWF is not a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. Indeed, section 501(c)(3) specifically bars covered organizations from engaging in political advocacy of the sort CWF undertakes. CWF also does not hold itself out as having a charitable purpose, nor does it employ charitable appeals as a basis for fundraising. Accordingly, CWF is not subject to the Funds Act, and it objects to the Investigative Subpoena and the Cease and Desist Order on this ground.

Moreover, the provisions of FECA and its implementing rules "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. § 453. The Federal Election Commission construes this provision to preempt State laws concerning: "(1) Organization and registration of political committees supporting Federal candidates; (2) Disclosure of receipts and expenditures by Federal candidates and political committees; and (3) Limitation on contributions and expenditures regarding Federal candidates and political committees." 11 C.F.R. § 108.7(b). The Funds Act addresses these specific matters, see 10 P.S. §§ 162.5 - 162.9 (registration), 162.13 (disclosure and limitations), and it accordingly is superseded and preempted by FECA with respect to CWF. See, e.g. Teper v. Miller, 82 F.3d 989, 998 (11th Cir. 1996) (FECA preempts Georgia law to the extent it purported to prevent a state legislator from accepting contributions for his federal election campaign); Bunning v. Commonwealth of Ky., 42 F.3d 1008, 1012 (6th Cir 1994) (FECA preempts Kentucky law to the extent it authorized the State to investigate a poll conducted by a congressional reelection committee); Friends of Phil Gramm v. Americans for Phil Gramm in '84, 587 F. Supp. 769 (E.D. Va. 1984) (FECA preempts Virginia law concerning the name of an independent political committee). In fact, CWF is governed by parallel provisions of federal law. See 2 U.S.C. §§ 433(a) (registration), 434(a) (disclosure), 441a-h (limitations).

CWF hereby expressly reserves the right to move to quash the Investigative Subpoena and the Cease and Desist Order should the Bureau further attempt their enforcement.

We hope this letter sufficiently explains the position of CWF. Please do not hesitate to contact us if the foregoing is unclear in any respect.

Sincerely yours,



Bobby R. Burchfield
Jason A. Levine

COVINGTON & BURLING

Mr. Karl E. Emerson
December 11, 1998
Page 3

cc: Ms. Yvette Kane
Secretary of the Commonwealth
Commonwealth of Pennsylvania
Department of State
Harrisburg, PA 17120



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF CHARITABLE ORGANIZATIONS**

**LEGAL OFFICE
PROSECUTION DIVISION
(717) 783-7200
FAX: (717) 787-0251**

**116 PINE STREET
P.O. BOX 2649
HARRISBURG, PA
17105-2649**

February 8, 1999

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jason A. Levine, Esquire
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
P. O. Box 7566
Washington, DC 20044-7566

Dear Mr. Levine:

Karl Emerson has forwarded your December 11, 1998 letter to the legal office so that we may explain our position regarding the Cease and Desist Order, the subpoena, and the solicitations mailed into the Commonwealth of Pennsylvania by your client Campaign for Working Families ("CWF").

The Federal Election Campaign Act ("FECA") does not supersede and preempt the Solicitation of Funds for Charitable Purposes Act ("Solicitation Act") with regard to the solicitation of funds for charitable purposes in the Commonwealth. First, the Solicitation Act does not seek to regulate the organization and registration of political committees supporting Federal candidates. It seeks to regulate the solicitation of funds for charitable purposes within the Commonwealth. The purpose of the Solicitation Act is to protect the Commonwealth's citizens from fraud and deception, an area which has historically been within the police powers of the states. Second, Section 13, 10 P.S. §162.13, does not seek to regulate the disclosure of receipts and expenditures by Federal candidates and political committees. The disclosure it regulates is the information that must be disclosed on the solicitation itself. Finally, Section 13 of the Solicitation Act does not limit the contributions and expenditures regarding Federal candidates and political committees. It limits the solicitation of contributions to the charitable purpose expressed in the solicitation material or on the registration statement on file with the Bureau of Charitable Organizations ("Bureau").

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CWF's mailings into Pennsylvania do employ a charitable appeal. Admittedly, some mailings do advocate supporting certain candidates because of their beliefs, however the mailings which promote, in whole or in part, supporting the pro-life, anti-gay rights, and pro-family movements are employing a social welfare or advocacy objective. Under the Solicitation Act, this is a charitable purpose and appeal. Accordingly, these solicitations fall within the jurisdiction of the Solicitation Act and the Secretary of the Commonwealth.

The Secretary properly issued a Cease and Desist Order in May 1998 due to CWF's failure to respond to the Bureau's requests for information. The subpoena was a follow-up measure after CWF continued to mail charitable solicitations into the Commonwealth in violation of the Cease and Desist Order. Section 16, 10 P.S. §162.16, of the Solicitation Act gives the Secretary the authority to conduct an investigation and issue subpoenas where she deems necessary. Because your client's solicitations use a charitable appeal, the Secretary acted properly within her jurisdiction in issuing the investigative subpoena.

In order for this office to further its understanding of CWF's activities and extent of solicitations it is requested that you supply additional information as described below:

- 1. Identify each organization or other entity that conducted any type of solicitation in the Commonwealth of Pennsylvania on behalf of CWF, including the organization's full name, address, contact person, and contact telephone number. Also, state the beginning date and, if appropriate, the ending date of any solicitation activity.**
- 2. Describe, in detail, any methods by which CWF, or anyone acting on its behalf, solicited contributions in Pennsylvania.**
- 3. Provide complete and accurate copies of any written materials utilized as part of, or in response to, any solicitation in Pennsylvania, including, but not limited to, any invoices, receipts, letters, advertisements, brochures, books, publications; telephone scripts, etc.**
- 4. Indicate the total number of items printed, by whom, including name, address, and contact telephone number for any advertisements, brochures, books, publications, or similar item identified in number 2.**

- 5. Identify each location from which solicitations are conducted, to include:
 - a. complete street, city and state address;**
 - b. complete name of the person or entity leasing or renting the facility;**
 - c. name and title of the person supervising the activities;**
 - d. a description of the activities conducted there; and**
 - e. start and, if applicable, stop date of the activities.****

- 6. Identify any and all Officers, Directors, Trustees, Stockholders, Principals, or other individuals having or exercising any financial or other control over CWF's activities, including the individual's address, telephone number, date of birth, social security number, and responsibilities.**

- 7. Identify any independent contractors, sub-contractors, out-sourcing agents, or other person or entity associated with CWF's solicitation activity in PA, including name, address, telephone number, date of birth, social security number, and type of service furnished. Provide copies of any written agreements with any identified individual(s) or, in the absence of written agreements, provide specific details of any verbal agreements.**

- 8. Provide exemplary copies of any and all contracts or other written agreements with any individual, group, organization, or other entity which conducts solicitation activity on behalf of CWF in Pennsylvania. In the absence of any written agreement, provide the details of any verbal agreement.**

- 9. Provide exemplary copies of any and all financial statements prepared by or on behalf of CWF.**

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- 10. Identify and all addresses, post office boxes, or similar mail receptacles receiving any mail, checks, invoices, monies, or other articles of communication or transactions associated with any solicitations activity CWF, or anyone acting on behalf of CWF, conducted in Pennsylvania.**
- 11. Identify any and all bank or similar accounts into which any checks, money orders, wire or electronic transfers, or any other financial instruments associated with any of CWF's solicitation activities in Pennsylvania are deposited, to include:**
 - a. name and address of the financial institution;**
 - b. title of the account;**
 - c. account number(s);**
 - d. date the account was opened; and**
 - e. name title of all authorized signers on the account.**
- 12. Identify each Pennsylvania resident/business who made a contribution in response to a solicitation, paid any fees, or purchased an advertisement of any other type of product or service, to include:**
 - a. name, address, and telephone number;**
 - b. amount of contribution or payment; and**
 - c. date of the contribution or payment.**

Therefore, I am requesting that you comply with the subpoena and provide the additional information within 30 days or this office will take steps to enforce the subpoena.

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If you have any questions, please feel free to contact me at the above number.

Yours truly,

A handwritten signature in cursive script that reads "Carole L. Clarke".

Carole L. Clarke
Prosecuting Attorney
Commonwealth of Pennsylvania
Bureau of Charitable Organizations

CLC/dws